Supreme Court of the United States.

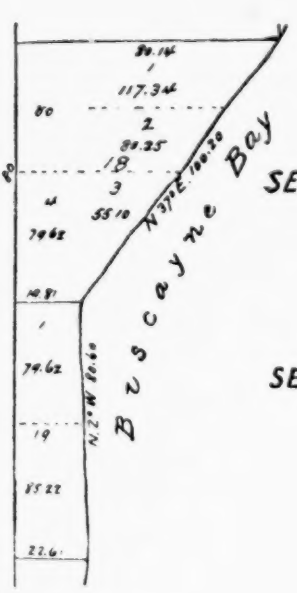
No. 188.—October Term, 1904.

William H. H. Gleason, Plaintiff in Error, vs. Edward L. White. } In error to the Supreme Court of the State of Florida.

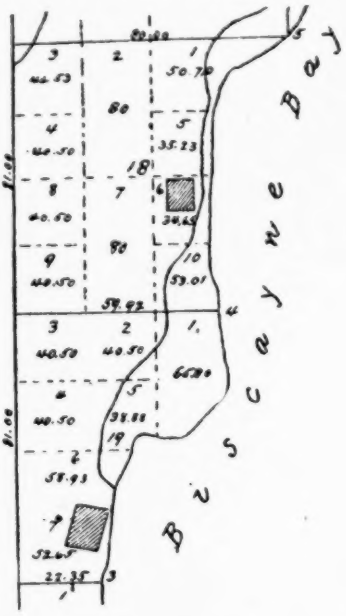
[May 29, 1905.]

In 1845 fractional township 53 south, range 42 west, in Dade County, Florida, was surveyed and a plat thereof was approved and filed in the office of the surveyor general in Florida, and also in the office of the Land Department of Washington. By this survey fractional section 19 was divided into two lots, numbered 1 and 2, containing 164.84 acres. In 1875 a resurvey was made of the township, plats of which were also duly approved and filed in the office of the surveyor general in Florida and with the Land Department at Washington. By this new survey said section 19 was divided into 7 lots, containing in the aggregate 337.76 acres. The difference between the two surveys of section 19 is shown in the following plats:

Plat 1845.



Plat 1875.



On June 24, 1878, a patent was issued to William H. Gleason, on a homestead application, for a tract described as lots 1 and 2 of section 19, containing 164.84 acres, according to the official plat of the survey of 1845. Plaintiff in error, who was plaintiff below, claims by deed from the patentee. On May 4, 1885, lot 5 of section 19, according to the survey in 1875, was patented by the United States to Florida as swamp land, and thereafter deeded by the State to the defendant. In 1898 this action to recover a part of lot 5 was commenced in the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Dade County. The case was tried by the court without a jury; a judgment rendered for the defendant was affirmed by the Supreme Court of the State, and thereafter brought to this court on writ of error. Included in the action was lot 1 of section 19, as shown by the plat of 1875, but as judgment was rendered for the plaintiff in respect to that tract, it is unnecessary to further refer to it. There was a stipulation as to certain facts, with a provision that testimony of further facts might be received, and that the court might view the premises. The findings of the court recite that it viewed the premises, and upon the stipulated facts, and further testimony incorporated in a bill of exceptions, found generally for the defendant as to lot 5.

Mr. Justice BREWER delivered the opinion of the Court.

The case was tried by the court without a jury. No special findings of fact having been made, and the proceedings in the trial court having been approved by the Supreme Court of the State, without an opinion, we must affirm the judgment if there be evidence sufficient to sustain it, although there may be other testimony of a contradictory nature. It is not our province to weigh conflicting testimony in a case coming to us as this does.

It is undoubtedly true that the official surveys of the public lands of the United States are controlling. *Stoneroad* v. *Stoneroad*, 158 U. S. 240; *Russell* v. *Maxwell Land Grant Co.*, Id. 253; *United States* v. *Montana Lumber and Manufacturing Co.*, 196 U. S. 573; *Whitaker* v. *McBride*, 197 U. S. 510. Here we have two conflicting official surveys and plats, and, by mistake of the Land Department, two patents have been issued, which, in a certain aspect of the surveys and plats, also conflict. It is one of those unfortunate mistakes which sometimes occur, and which necessarily throw confusion and doubt upon titles. Since it was discovered the Land Department has wisely refused to extend the confusion by further patents under the survey of 1875.

The patent to Gleason was three years after the last survey, which, in so far as it conflicted with the prior survey, superseded that and became the official record of the Land Department. Notwithstanding this, the patent purports to convey lots 1 and 2 as shown by the survey of 1845. Undoubt-

edly the mistake arose because the homestead entry, which must have been five years before the patent, was made before the survey of 1875, and at that time the official record was the plat of 1845, which showed only the two lots. Through carelessness, and not recognizing the change made by the survey of 1875, the patent refers to the survey of 1845, relying upon the description in the homestead entry. The land patented amounted to 168.84 acres. The homestead law allowed one to enter 160 acres, and as the patent covered 4.84 acres more than the amount allowed for a homestead, the patentee paid the Government price for the excess, $6.05. The contract of McKay for the survey of 1845 was a contract to survey the exterior lines of township 53, and while the field notes of the west line of the township are preserved, his notes of the east and subdivision lines are not to be found in the Land Department. The plat, as will be seen, shows an east line running north 2° west, 80.60 chains, a south line 22.61 chains from the west line, and a north line 19.81 chains, making almost a rectangle, and containing the number of acres described in the patent. East of this township appears Biscayne Bay, according to each plat. The plat made in 1875 shows a south line of 22.35 chains, very nearly the same as that of the plat of 1845, but the north line is 59.92 chains, making an almost complete quarter of the N. W. sec. 19. The field notes of the survey of 1875 show that the surveyor found on the line between sections 18 and 19, at a distance of 40.35 chains from the west township line, an old quarter section post, and set a new one in place of it. It would seem a not unreasonable conclusion from this that McKay in 1845 in fact surveyed a tract of land east of lots 1 and 2, but that when the plat was made either his field notes had disappeared or were ignored in running the lines of the north half of section 19. It further appears that the survey of 1875 was requested by the patentee, William H. Gleason, who stated that the survey of the entire township was entirely or almost entirely obliterated. It also appears that Gleason, when he received his patent, took title to what was substantially the west half of the northwest quarter and the west half of the southwest quarter of section 19, the east line, as shown by the plat, being almost a straight line, running north and south. It does not seem that he could have been mistaken as to the land that he was acquiring from the Government, for he must have lived on it five years in order to have perfected his homestead. He could not have been ignorant of the large tract lying east of what was described in the plat of 1845 as "lot 1." The official plat at the time of the patent was the plat of the survey of 1875. He was chargeable as matter of law with notice of that plat. More than that, as the survey was at his instance, it is a reasonable assumption that he knew in fact what the lines of that survey and plat were. Under those circumstances full justice is done if a patent title to lands outside his lines as shown by the plat of 1845, is

sustained, for he still is protected in the tract bounded by those lines and amounting to 164.84 acres. To give him twice that amount of land would be enabling him to profit by a mistake of the Government—a mistake of which he was cognizant. Under those circumstances we are of opinion that the judgment of the Supreme Court of Florida must be and it is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.